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2d Session }

SENATE

} REPORT
No. 1920

MRS. EVELYN CAMPBELL

JUNE 27, 1952.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2913]

The Committee on the Judiciary, to which was referred the bill, (H. R. 2913) for the relief of Mrs. Evelyn Campbell, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay the sum of \$20,000 to Mrs. Evelyn Campbell of Baton Rouge, La., in full settlement of her claims against the United States for personal injuries sustained by her on April 27, 1946, in Baton Rouge, La., when she was run into and knocked to the sidewalk by personnel of the United States Navy who were running to board a troop train on which they were traveling under Government orders.

STATEMENT

On April 27, 1946, two groups of enlisted personnel of the Navy were traveling on a Navy troop train from the west coast to New Orleans, La., and other points on the east coast under Government orders WMB 77661 and WSM 77722. The troop train was in the city of Baton Rouge, La., from approximately 9:30 p. m. to 10:30 p. m., during which time the train was iced and serviced. During this lay-over a number of the men left the train, and when the train started to pull out, the men dashed across the street and around the train station to catch the train. Mrs. Campbell alleges that one or more of these men negligently ran into her while she was standing in group of five persons near the edge of the sidewalk on the north side of Convention Street and near the south entrance to the Heidelberg Hotel. As the result of this collision, she was knocked to the sidewalk and severely injured.

The incident was reported to the commandant of the Eighth Naval District at New Orleans, La., by long-distance telephone from the police office in Baton Rouge. The commandant conducted an immediate investigation and secured reports from the officer in charge of the two drafts of men traveling on the train, but despite interrogation of the majority of the members making up the drafts, no information was obtained establishing the identity of any particular individual or individuals responsible for the collision.

The Navy Department, in reporting on a prior, identical bill in the Eighty-first Congress (H. R. 6943), stated in part as follows:

In response to an inquiry from Mrs. Campbell's attorneys as to the possibility of presenting a claim for compensation for her injuries and expenses, such attorneys were advised that there was no authority vested in the Department of the Navy to consider claims where Navy personnel were acting outside the scope of their employment.

Suit was thereafter instituted in the United States District Court for the Eastern District of Louisiana seeking damages in the total amount of \$40,982.80 comprising the following items: \$30,000 for personal injuries, permanent disability, resulting pain and suffering and mental anguish, and \$10,982.80 for medical expenses (\$1,963.70 incurred, \$500 estimated) and estimated future nursing expenses for the rest of plaintiff's life.

Suit was filed under the provisions of the Federal Tort Claims Act.

The district court held that Mrs. Campbell's injuries, with the consequent losses and expenses "were caused solely by the gross negligence and carelessness of a sailor traveling under Government orders" and that the sailor guilty of such tort was "acting in line of duty" at the time he committed the same and that the United States was liable therefor.

The full text of the departmental letter, and the full text of the district court's decision, are appended hereto and made a part of this report.

Regarding the nature and extent of claimant's injuries and resulting expenses, there follows an excerpt from the court's findings of fact:

As a direct and consequential result of the accident, Mrs. Campbell suffered personal injuries consisting principally of (a) a comminuted fracture of the lower and of the right radius involving the wrist joint, (b) a complete fracture of the neck of the right hip and (c) bruises and contusions. The fracture of the right radius united with marked deformity, which is permanent, and has left her right hand functionally impaired for the rest of her life. The fracture of the hip was reduced by traction and a Smith-Peterson nail was inserted by the surgeon, Dr. McHugh, in the bone to keep the fragments in position. There is now some absorption of the head and neck of the femur with questionable union of the fracture. Mrs. Campbell walks with a limp, using a crutch or stick for support. Her right knee and right ankle still swell. The chances of more improvement of her hip condition are about even, and it will be about 4 years before it will be known definitely whether or not this condition will further improve. She suffered excruciating pain for a while following the accident and was in fear that she would not survive her injuries. After surgery, her pain became less severe, but she still suffers pain, though not continuously.

Her known expenses from the date of the accident to and including February 28, 1947, amount to \$1,963.70.

After the filing of suit, she incurred additional medical expenses in the sum of \$36.

In addition to the foregoing, Mrs. Campbell must undergo periodical examinations by Dr. McHugh and X-ray examinations of her hip by a radiologist.

She must have an attendant with her constantly at an estimated cost of \$2 per day for a period of 11.67 years from February 28, 1947. This will cost her \$8,519.10, assuming (which we have, although perhaps improperly, in view of the progressively increasing cost of domestic servants) that there will be no further increase in the cost of domestic help. Adding these items together gives a grand total of \$10,518.80.

The plaintiff has also asked for \$500 to cover future medical expenses which will be substantial, in view of the fact that she must undergo periodical physical and X-ray examinations.

The district court concluded, as a matter of law, that upon the evidence the serious and permanent injuries suffered by claimant, and her losses and expenses, were caused solely by the gross negligence and carelessness of a sailor traveling under Government orders; and that said sailor was "acting in line of duty" at the time of committing the tort, making the United States liable in damages therefor. Thereupon judgment was granted in favor of claimant in the sum of \$21,018.80 (*Campbell v. United States*, 75 F. Supp. 181, decided January 9, 1948).

An appeal from this judgment was prosecuted in the United States Court of Appeals for the Fifth Circuit. The United States contended, on appeal, that the finding of the district court as to liability was erroneous and that the quantum of damages assessed was greatly excessive. The Government pointed to the uniform course of decisions in Louisiana holding an employer not liable under the doctrine of respondeat superior where employees are engaged in excursions or enterprises of their own rather than in carrying out the business of the employer, and to that provision of the Federal Tort Claims Act¹ making the Government liable only under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the accident occurred.

Claimant, as appellee, invoked the definitional section of the Federal Tort Claims Act,² which provides that "acting within the scope of his office or employment," in the case of a member of the military or naval forces of the United States, means "acting in line of duty," and cited opinions of the Attorney General, rulings of the Judge Advocate General, and court decisions in which "acting in line of duty" was given a broad meaning.

The Circuit Court of Appeals ruled in favor of the United States, reversing the judgment of the district court (*United States v. Campbell*, 172 F. 2d 500 (C. A. 5th Cir., 1949)). A petition for a writ of certiorari was denied by the Supreme Court of the United States (337 U. S. 957). This final denial of relief to claimant through judicial process prompted introduction of this bill to provide the requested relief through legislative process.

In this case there is no doubt that claimant suffered serious and permanent injuries through no fault of her own; the district court found that such injuries were caused solely by Government personnel acting in line of duty. The ruling of the court of appeals adverse to claimant was based solely on the decision that the United States is not subjected to liability for acts of military or naval personnel without regard to the doctrine of respondent superior, as applied in determining the liability of a private employer, despite the provision in the Federal Tort Claims Act that such personnel acting in line of duty are considered to be acting within the scope of employment.

In these circumstances it is apparent that claimant is without deserved relief from a legal viewpoint of her case, but the committee is of the opinion that the equity in her favor demands recompense, which can be granted only by legislative action in her behalf. The House of Representatives has taken such action, passing this bill to award claimant the sum of \$20,000. The committee considers this

¹ 28 U. S. C. 1346 (b) (1946 ed., Supp. IV); formerly 28 U. S. C. 931 (a) (1946 ed.).

² 28 U. S. C. 2671 (1946 ed., Supp. IV); formerly 28 U. S. C. 941 (1946 ed.).

sum fair and reasonable, as did a district court of the United States in addition to the House of Representatives, and, accordingly, it is recommended that this bill (H. R. 2913) be considered favorably.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., March 15, 1950.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: The bill, H. R. 6943 for the relief of Mrs. Evelyn Campbell was referred by your committee with a request for a report thereon.

The purpose of the proposed legislation is to authorize and direct the Secretary of the Treasury to pay the sum of \$20,000 to Mrs. Evelyn Campbell, of Baton Rouge, La., "in full settlement of all claims of the said Mrs. Evelyn Campbell against the United States for personal injuries sustained by her on April 27, 1946, in Baton Rouge, La., when she was run into and knocked to the sidewalk by personnel of the United States Navy who were running to board a troop train on which they were traveling under Government orders."

The bill contains a recital to the effect that the United States Court of Appeals for the Fifth Circuit, on February 11, 1949, held that compensation for such injuries could not be obtained under the Federal Tort Claims Act because such personnel were not acting within the scope of their employment at the time of the injuries.

It appears from the records of the Department of the Navy that on April 27, 1946, two groups of enlisted personnel of the Navy were traveling on a Navy troop train from the west coast to New Orleans, La., and other points on the east coast under Government orders WMB 77661 and WSM 77722. The troop train was in the city of Baton Rouge, La., from approximately 9:30 p. m. to 10:30 p. m., during which time the train was iced and serviced. During this lay-over a number of the men left the train, and when the train started to pull out, the men dashed across the street and around the train station to catch the train. Mrs. Campbell alleges that one or more of these men negligently ran into her while she was standing in a group of five persons near the edge of the sidewalk on the north side of Convention Street and near the south entrance to the Heidelberg Hotel. As the result of this collision, she was knocked to the sidewalk and severely injured.

The incident was reported to the commandant of the Eighth Naval District at New Orleans, La., by long distance telephone from the detective's office in Baton Rouge. The Commandant conducted an immediate investigation and secured reports from the officer in charge of the two drafts of men traveling on the train, but despite interrogation of the majority of the members making up the drafts, no information was obtained establishing the identity of any particular individual or individuals responsible for the collision.

In response to an inquiry from Mrs. Campbell's attorneys as to the possibility of presenting a claim for compensation for her injuries and expenses, such attorneys were advised that there was no authority vested in the Department of the Navy to consider claims where Navy personnel were acting outside the scope of their employment.

Suit was thereafter instituted in the United States District Court for the Eastern District of Louisiana seeking damages in the total amount of \$40,982.80 comprising the following items: \$30,000 for personal injuries, permanent disability with resulting pain and suffering and mental anguish, and \$10,982.80 for medical expenses (\$1,963.70 incurred, \$500 estimated) and estimated future nursing expenses for the rest of plaintiff's life.

Suit was filed under the provisions of the Federal Tort Claims Act.

The district court held that Mrs. Campbell's injuries, with the consequent losses and expenses "were caused solely by the gross negligence and carelessness of a sailor traveling under Government orders" and that the sailor guilty of such tort was "acting in line of duty" at the time he committed the same and that the United States was liable therefor.

As to the nature and extent of her injuries and expenses, the court made the following findings of fact:

"As a direct and consequential result of the accident, Mrs. Campbell suffered personal injuries consisting principally of (a) a comminuted fracture of the lower end of the right radius involving the wrist joint, (b) a complete fracture of the neck of the right hip, and (c) bruises and contusions. The fracture of the right radius united with marked deformity, which is permanent, and has left her right hand functionally impaired for the rest of her life. The fracture of the hip was reduced by traction and a Smith-Peterson nail was inserted by the surgeon, Dr. McHugh, in the bone to keep the fragments in position. There is now some absorption of the head and neck of the femur with questionable union of the fracture. Mrs. Campbell walks with a limp, using a crutch or stick for support. Her right knee and right ankle still swell. The chances of more improvement of her hip condition are about even, and it will be about 4 years before it will be known definitely whether or not this condition will further improve. She suffered excruciating pain for a while following the accident and was in fear that she would not survive her injuries. After surgery, her pain became less severe, but she still suffers pain, though not continuously.

"Her known expenses from the date of the accident to and including February 28, 1947, amount to \$1,963.70.

"After the filing of suit, she incurred additional medical expenses in the sum of \$36.

"In addition to the foregoing, Mrs. Campbell must undergo periodical examinations by Dr. McHugh and X-ray examinations of her hip by a radiologist.

"She must have an attendant with her constantly at an estimated cost of \$2 per day for a period of 11.67 years from February 28, 1947. This will cost her \$8,519.10, assuming (which we have, although perhaps improperly, in view of the progressively increasing cost of domestic servants) that there will be no further increase in the cost of domestic help. Adding these items together gives a grand total of \$10,518.80.

"The plaintiff has also asked for \$500 to cover future medical expenses which will be substantial, in view of the fact that she must undergo periodical physical and X-ray examinations."

In its quantum, the court said that Mrs. Campbell, a widow, was in good health before the accident; that she is now practically helpless for the rest of her life and has lost the physical ability to perform the duties of a homemaker such as cooking, washing, ironing, etc. Judgment was accordingly rendered in the amount of \$10,000 for the body injuries, pain, suffering, etc., and \$11,018.80 (\$10,518 plus \$500 for future nursing or attendant's expenses). The total judgment was \$21,018.80 (75 F. S. 181).

Appeal was taken by the United States to the United States Court of Appeals for the Fifth Circuit, which court in a decision of February 11, 1949, rehearing denied, April 6, 1949, reversed the decision of the United States district court (172 F. (2d) 500).

The circuit court of appeals held (syllabus) that:

"The words 'acting within scope of office or employment' must be given consistent meaning throughout Federal Tort Claims Act as subjecting United States to liability to third person for negligent acts of United States employees 'acting within scope of office or employment' only, and to same extent that private employers would be liable for negligent acts of their employees under law of State in which accident occurred, and provision in the act that member of United States military or naval forces who is 'acting in line of duty' is 'acting within the scope of office or employment' does not subject United States to liability for negligent acts of military person without regard to respondeat superior doctrine as applied in determining liability of private employer (28 U. S. C. A., §§ 1346, 2671)."

Certiorari to the United States Supreme Court was denied (337 U. S. 957) so that the decision of the United States Court of Appeals is now final and conclusive. Because of this ruling of the court, claimant seeks relief by H. R. 6943.

The evidence disclosed at the trial in the district court indicates that claimant sustained severe and to some extent permanent injuries when knocked down by men in the naval service, although the identity of such men has never been established. Mrs. Campbell was 63 years old at the time.

While such injuries and the cause thereof are not disputed, nevertheless it seems clear from the decision of the United States Court of Appeals, *supra*, that no legal liability rests on the United States. Under such circumstances, the Department of the Navy is unable to recommend favorable action on the bill.

If, upon consideration of the unfortunate accident and the serious and permanent injuries suffered as the result thereof by the claimant who was entirely free

from any contributory negligence, the Congress should deem it appropriate to extend ex gratia relief, the Department of the Navy would interpose no objection to such action.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

Respectfully yours,

G. L. RUSSELL,
*Rear Admiral, United States Navy,
Judge Advocate General of the Navy
(For the Secretary of the Navy).*

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF
LOUISIANA, BATON ROUGE DIVISION

Civil Action No. 437

Mrs. Evelyn Campbell, Plaintiff, v. United States of America, Defendant

(75 F. Supp. 181)

L. W. Brooks, Taylor, Porter, Brooks & Fuller, Baton Rouge, La., attorneys for plaintiff.

A. L. Ponder, Jr., Assistant United States Attorney, New Orleans, La., attorney for defendant.

PORTERIE, *District Judge:*

Mrs. Evelyn Campbell, a widow, filed the captioned action under the Federal Tort Claims Act (28 U. S. C. A., sec. 921, et seq.) to recover from the United States Government the sum of \$40,982.80, being \$30,000 for her personal injuries, permanent disability, resulting pain and suffering and mental anguish, and \$10,982.80 for her medical expenses (\$1,963.70 incurred, \$500 estimated), and estimated future nursing expenses for the rest of her life. She alleges in her complaint that on April 27, 1946, at approximately 10:30 p. m., while standing near the edge of the sidewalk on the north side of Convention Street between First and Lafayette Streets near the south entrance to the Heidelberg Hotel in the city of Baton Rouge, she was negligently run into and knocked down by a sailor who was being transported from the State of California to the city of New Orleans, or some point east under Government orders.

Mrs. Campbell, who was 63 years old when she filed suit, suffered injuries as will be set out in our findings of fact.

FINDINGS OF FACT

1. Mrs. Campbell was seriously injured on April 27, 1946, about 10:30 p. m., when she was run into and knocked down by one of a group of sailors.

2. At the time, Mrs. Campbell was standing on the north side of Convention Street near Lafayette Street in Baton Rouge, La., about 2 or 3 feet from the south edge of the sidewalk and near the curb of the paved street. She was one of a group of five persons, namely, Mrs. Campbell, her daughter, Ruth Campbell, Emmett Webb, Harold M. Quinlivan, and G. S. Stall, who were conversing on the sidewalk, near the street; the first three named had just finished dining at the Heidelberg Hotel, which is located on the northwest corner of Convention and Lafayette Streets in Baton Rouge, immediately by and at the very place of the accident.

3. There was a clear space of approximately 8 or 10 feet between this group and the south wall of the hotel building for pedestrians to pass on the sidewalk.

4. The identity of the sailor who struck and knocked down Mrs. Campbell was not established but he was one of two groups of sailors consisting of 360 and 141 enlisted men being transported by train from points in the State of California to the city of New Orleans and points east under Government orders WMB 77661 and WMB 77722. The train stopped in Baton Rouge from about 9:30 to 10:30 p. m. on April 27, 1946, to be iced and serviced.

5. The sailor who struck and knocked down the plaintiff was dressed at the time in the regulation uniform of an enlisted man. He was traveling under one of the aforesaid orders and was under the command of either Lt. (jg) David M. Hysinger or Ensign Clifford A. Hemmerling.

6. At the time of the accident this sailor and a number of others were running together, somewhat in a bunch, to catch the very slowly moving, departing train, in sight one block away.

7. As a direct and consequential result of the accident, Mrs. Campbell suffered personal injuries consisting principally of (a) a comminuted fracture of the lower end of the right radius involving the wrist joint, (b) a complete fracture of the neck of the right hip and (c) bruises and contusions. The fracture of the right radius united with marked deformity, which is permanent, and has left her right hand functionally impaired for the rest of her life. The fracture of the hip was reduced by traction and a Smith-Peterson nail was inserted by the surgeon, Dr. McHugh, in the bone to keep the fragments in position. There is now some absorption of the head and neck of the femur with questionable union of the fracture. Mrs. Campbell walks with a limp, using a crutch or stick for support. Her right knee and right ankle still swell. The chances of more improvement of her hip condition are about even, and it will be about 4 years before it will be known definitely whether or not this condition will further improve. She suffered excruciating pain for a while following the accident and was in fear that she would not survive her injuries. After surgery, her pain became less severe, but she still suffers pain, though not continuously.

8. Her known expenses from the date of the accident to and including February 28, 1947, amount to \$1,963.70.

After the filing of suit, she incurred additional medical expenses in the sum of \$36.

In addition to the foregoing, Mrs. Campbell must undergo periodical examinations by Dr. McHugh and X-ray examinations of her hip by a radiologist.

She must have an attendant with her constantly at an estimated cost of \$2 per day for a period of 11.67 years from February 28, 1947. This will cost her \$8,519.10, assuming (which we have, although perhaps improperly, in view of the progressively increasing cost of domestic servants) that there will be no further increase in the cost of domestic help. Adding these items together gives a grand total of \$10,518.80.

The plaintiff has also asked for \$500 to cover future medical expenses which will be substantial, in view of the fact that she must undergo periodical physical and X-ray examinations.

CONCLUSIONS OF LAW

1. The evidence shows that the serious and permanent injuries suffered by Mrs. Campbell and her losses and expenses were caused solely by the gross negligence and carelessness of a sailor traveling under Government orders.

2. The evidence shows also that the sailor, guilty of the aforesaid tort, was "acting in line of duty" at the time he committed the same and the United States of America is liable therefor (28 U. S. C. A., sec. 931 (a) and sec. 941 (c)).

DISCUSSION

Counsel for the Government makes much of the point that the servicemen involved here were not in direct control of any of their officers—as to say, that there was no squad, platoon, or company, in formation, in charge of a sergeant, a lieutenant, or a captain, respectively, when the injury was inflicted; that in the instant circumstances the tort liability of the sovereign does not arise.

The men, from the circumstances, had at least the tacit approval or implied permission of their officers to leave the train being serviced at the Baton Rouge station. They wanted relaxation and, also, to go to eating and refreshment spots nearby—within a city block. The slowness with which the train left Baton Rouge to go to New Orleans showed that its operators knew that many of the men had gone to town and needed a chance to get back on. From the record we infer that none was left behind; the very slowly leaving train got all of them.

Furthermore, these men running to the Government-chartered train were obeying orders of their Government to go to New Orleans; they were not running to catch a train taking them to an amusement spot or a baseball park for their own individual and discretionary pleasure.

There, we believe, is the dividing line in the interpretation of the qualification "acting in line of duty."

We have not given value to the cases where the claimant in a tort case is a member of the Armed Forces. In these there is very liberal interpretation. See *Moore v. United States* (48 Ct. Cl. 110). We realize that here third-party liability is sought to be established against the Government for the tort of one of its

fighters and that the interpretation of what is "acting in line of duty" should be reasonably strict—but yet not so strict as to make the act practically inapplicable and, consequently, meaningless.

QUANTUM

Mrs. Campbell, a widow, was in good health before this accident. She is now practically helpless for the rest of her life. She has lost the physical ability to perform the duties of a homemaker, such as cooking, washing, ironing, etc.

We should be guided by the decisions of the Supreme Court of Louisiana. Exactly similar cases are generally not found; but the following four cases, involving injuries approaching those of the instant case and considering that Mrs. Campbell is already 63 years of age and, consequently, at law, with relatively short expectancy of life, will support the allowance of the amount of \$10,000 for the body injuries, pain suffering, etc., of the plaintiff. *Oliphant v. Town of Lake Providence* (193 So. 516 (La. App. 1939)); *Stough v. Young* (185 So. 476 (La. App. 1938)); *Hamilton v. Lee* (144 So. 249 (La. App. 1932)); *Nelson v. VS & P Railway Co.* (141 La. 475, 75 So. 212 (1917)). These cases indicate the allowance of \$15,000; but the persons hurt are younger than the instant plaintiff; and we remember that we are allowing a substantial amount for "future nursing or attendant's expenses". This latter amount, item 8 of finding of fact, is \$11,018.80 (\$10,518 plus \$500).

Judgment in the total of \$21,018.80 will be signed accordingly.

GASTON L. PORTERIE,
United States District Judge.

ALEXANDRIA, LA., January 9, 1948.

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